



Billing Code: 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

**[EPA-R09-OAR-2012-0792; FRL-9766-9]**

**Approval and Promulgation of Implementation Plans and  
Designation of Areas for Air Quality Planning Purposes; State of  
Nevada; Redesignation of Clark County to Attainment for the 1997  
8-Hour Ozone Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve, as a revision of the Nevada state implementation plan, the State's plan for maintaining the 1997 8-hour ozone standard in Clark County for ten years beyond redesignation, and the related motor vehicle emissions budgets, because they meet the applicable requirements for such plans and budgets. EPA is also taking final action to approve a request from the Nevada Division of Environmental Protection to redesignate the Clark County ozone nonattainment area to attainment for the 1997 8-hour ozone National Ambient Air Quality Standard because the area meets the statutory requirements for redesignation under the Clean Air Act.

**DATES:** *Effective Date:* This rule is effective on [Insert date 30 days after publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R09-OAR-2012-0792. Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., confidential business information or "CBI"). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Ginger Vagenas, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3964, [vagenas.ginger@epa.gov](mailto:vagenas.ginger@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

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**I. Summary of Proposed Action**

On November 13, 2012 (77 FR 67600), we proposed to take several related actions. First, under Clean Air Act (CAA or "Act") section 110(k)(3), EPA proposed to approve a submittal from the Nevada Division of Environmental Protection (NDEP) dated April 11, 2011 of Clark County's *Ozone Redesignation Request and Maintenance Plan* (March 2011) ("Clark County Ozone Maintenance Plan" or "Ozone Maintenance Plan") as a revision to the Nevada state implementation plan (SIP).

In connection with the Clark County Ozone Maintenance Plan, EPA proposed to find that the maintenance demonstration showing that the area will continue to attain the 1997 8-hour ozone

national ambient air quality standard (NAAQS or "standard")<sup>1</sup> for 10 years beyond redesignation (i.e., through 2022), and the contingency provisions describing the actions that Clark County will take in the event of a future monitored violation, meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. EPA also proposed to approve the motor vehicle emissions budgets (MVEBs) in the Clark County Ozone Maintenance Plan because we found they met the applicable transportation conformity requirements under 40 CFR 93.118(e).

Second, under CAA section 107(d)(3)(D), EPA proposed to approve NDEP's request that accompanied the submittal of the maintenance plan to redesignate the Clark County 8-hour ozone nonattainment area<sup>2</sup> to attainment for the 1997 8-hour ozone NAAQS. We did so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion in this regard was based on our determination that the area has attained the 1997 8-hour ozone NAAQS, that relevant portions of the Nevada SIP are fully approved, that the improvement in air quality is due to

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<sup>1</sup> The 1997 8-hour ozone standard is 0.08 parts per million (ppm) averaged over an 8-hour time frame.

<sup>2</sup> The boundaries of the Clark County ozone nonattainment area are defined in 40 CFR 81.329. Specifically, the area is defined as: "That portion of Clark County that lies in hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218 but excluding the Moapa River Indian Reservation and the Fort Mojave Indian Reservation." The area includes a significant portion of the unincorporated portions of central and southern Clark County, as well as the cities of Las Vegas, Henderson, North Las Vegas, and Boulder City.

permanent and enforceable reductions in emissions, that Nevada has met all requirements applicable to the Clark County 8-hour ozone nonattainment area with respect to section 110 and part D of the CAA, and based on our approval as part of this action of the Clark County Ozone Maintenance Plan.

For the purposes of this final rule, we have summarized the basis for our findings in connection with the proposed approvals of the Ozone Maintenance Plan and redesignation request. For a more detailed explanation as well as background information concerning the 1997 8-hour ozone NAAQS, the CAA requirements for redesignation, and the ozone planning history of Clark County, please see our November 13, 2012 proposed rule.

*A. Determination That the Area Has Attained the Applicable NAAQS.*

Prior to redesignating an area to attainment, CAA section 107(d)(3)(E)(i) requires that we determine that the area has attained the NAAQS. For our proposed rule, consistent with the requirements contained in 40 CFR part 50, EPA reviewed the ozone ambient air monitoring data for the monitoring period from 2009 through 2011, as recorded in the EPA Air Quality System (AQS) database, and determined, based on the complete, quality-assured data for 2009-2011, that the Clark County 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard

because the design value<sup>3</sup> is less than 0.084 ppm. We also reviewed preliminary data from 2012 and found that it was consistent with continued attainment of the standard in the Clark County 8-hour ozone nonattainment area. See pages 67602-67604 of our November 13, 2012 proposed rule.

*B. The Area Must Have a Fully Approved SIP Meeting Requirements Applicable for Purposes of Redesignation under Section 110 and Part D.*

Sections 107(d)(3)(E)(ii) and (v) of the CAA require EPA to determine that the area has a fully approved applicable SIP under section 110(k) that meets all applicable requirements under section 110 and part D for the purposes of redesignation. For the reasons summarized below, we found that the Clark County 8-hour ozone nonattainment area has a fully approved applicable SIP under section 110(k) that meets all applicable requirements under section 110 and part D for the purposes of redesignation. See pages 67604-67607 of our November 13, 2012 proposed rule.

With respect to section 110 of the CAA (General SIP Requirements), we concluded that NDEP and Clark County have met all SIP requirements for Clark County applicable for purposes of

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<sup>3</sup> The design value for the 8-hour standard is the three-year average of the annual fourth-highest daily maximum 8-hour ozone concentration at the worst-case monitoring site in the area.

redesignation. Our conclusion in this regard was based on our review of the Clark County portion of the Nevada SIP.

With respect to part D (of title I of the CAA), we reviewed the Clark County portion of the Nevada SIP for compliance with applicable requirements under both subparts 1 and 2.<sup>4</sup>

First, we noted that EPA previously determined that the Clark County 8-hour ozone nonattainment area attained the 1997 8-hour ozone NAAQS based on 2007-2009 ozone data (76 FR 17343, March 29, 2011), and thereby suspended, under 40 CFR 51.918, the obligation on the State of Nevada to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS. As such, we explained that the State's compliance status with the attainment-related SIP requirements under subpart 1 was not relevant for the purposes of evaluating the State's redesignation request.

As to the other applicable subpart 1 requirements, we found that:

- The emissions inventory requirements of CAA section 172(c)(3) would be met by our approval of the Clark County Ozone Maintenance Plan and related emissions inventories

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<sup>4</sup> Subpart 1 contains general, less prescriptive requirements for all nonattainment areas of any pollutant, including ozone, governed by a NAAQS. Subpart 2 contains additional, more specific requirements for ozone nonattainment areas classified under subpart 2.

for volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>);

- A fully-approved nonattainment New Source Review (NSR) program was not a prerequisite to redesignation in this instance because the Clark County Ozone Maintenance Plan demonstrates maintenance of the standard without implementation of nonattainment NSR; moreover, after redesignation, sources under NDEP jurisdiction would be subject to the federal PSD program and sources under Clark County jurisdiction would be subject to an EPA-approved PSD program that is deficient in certain respects but not in ways that would interfere with maintenance of the ozone standard; and
- Clark County and the State previously met the requirements for transportation conformity SIPs under section 176(c) (see EPA's approval of Clark County's transportation conformity SIP at 73 FR 66182, November 7, 2008).<sup>5</sup>

With respect to the requirements associated with subpart 2, we noted that the Clark County 8-hour ozone nonattainment area was initially designated nonattainment under subpart 1 of the CAA, but was subsequently classified as marginal nonattainment for the 1997 8-hour ozone standard under subpart 2 of part D of

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<sup>5</sup> In any event, EPA believes it is reasonable to interpret the conformity requirements as not applicable for purposes of evaluating a redesignation request under section 107(d)(3)(E). See *Wall v. EPA*, 265 F.3d 426, 439 (6th Cir. 2001) upholding this interpretation.



the CAA in May 2012, i.e., after NDEP's submittal of the redesignation request. Under EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time a redesignation request is submitted and in consideration of the inequity of applying retroactively any requirements that might in the future be applied, we determined that the requirements under subpart 2 need not be addressed as a condition of redesignation.

*C. The Area Must Show the Improvement in Air Quality is Due to Permanent and Enforceable Emissions Reductions.*

Section 107(d)(3)(E)(iii) precludes redesignation of a nonattainment area to attainment unless EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollution control regulations and other permanent and enforceable regulations. Based on our review of the control measures credited in the Clark County Ozone Maintenance Plan as providing the emissions reductions sufficient to attain the 1997 8-hour ozone NAAQS in the Clark County 8-hour ozone nonattainment area through the year 2022, and based on our consideration of other factors such as weather patterns and economic activity, we found that the improvement in air quality in the Clark County 8-hour ozone

nonattainment area is the result of permanent and enforceable emissions reductions from a combination of Federal vehicle and fuel measures and EPA-approved State and local control measures. See pages 670607-67608 of our November 13, 2012 proposed rule.

*D. The Area Must Have a Fully Approved Maintenance Plan under CAA Section 175A.*

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. As explained in the proposed rule, we interpret this section of the Act to require, in general, the following core elements: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. Based on our review and evaluation of the Ozone Maintenance Plan, we concluded that it contained the core elements and met the requirements of CAA section 175A. See pages 67608-67613. Our conclusion was based on the following findings:

- The base year emissions inventories for 2008 are comprehensive, that the methods and assumptions used by Clark County Department of Air Quality (DAQ) to develop the 2008 emission inventory are reasonable, and that the inventories reasonably estimate actual ozone season emissions in an attainment year. Moreover, we found that

the 2008 emissions inventories in the Ozone Maintenance Plan reflect the latest planning assumptions and emissions models available at the time the plan was developed, and provide a comprehensive and reasonably accurate basis upon which to forecast ozone precursor emissions for years 2015 and 2022;

- The projected VOC and NO<sub>x</sub> emissions estimates adequately account for projected area-wide growth, specific projects (including, among others, the Nellis Air Force Base F-35 beddown project), and emissions reduction credits (ERCs), and show that VOC and NO<sub>x</sub> emissions would remain well below the attainment levels throughout the 10-year maintenance period and thereby adequately demonstrate maintenance through that period;
- Clark County DAQ has committed to continue to operate the air quality monitoring network to verify the continued attainment of the 1997 8-hour ozone NAAQS ambient ozone monitoring;<sup>6</sup>
- Clark County DAQ's commitment in the Ozone Maintenance Plan to the continued operation of an ozone monitoring network and the requirement that NDEP and Clark County DAQ must

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<sup>6</sup> Although the Ozone Maintenance Plan is not explicit in this regard, we presume that Clark County DAQ's intention to continue operation of a monitoring network means that the agency intends to do so consistent with EPA's monitoring requirements in 40 CFR part 58 ("Ambient Air Quality Surveillance").

inventory emissions sources and report to EPA on a periodic basis<sup>7</sup> would be sufficient for the purpose of verifying continued attainment; and

- The contingency provisions of the Ozone Maintenance Plan clearly identify specific contingency measures, contain adequate tracking and triggering mechanisms to determine when contingency measures are needed, contain a sufficient description of the process of recommending and implementing contingency measures, and contain specific timelines for action, and would, therefore, be adequate to ensure prompt correction of a violation and comply with the contingency-related requirements under CAA section 175A(d).

Lastly, we proposed to approve the motor vehicle emissions budgets (MVEBs) contained in the Ozone Maintenance Plan because we found that they meet the transportation conformity adequacy requirements under 40 CFR 93.118(e)(4) and (5). In so proposing, we found that, among other things, the MVEBs, when considered with emissions from all other sources, would be consistent with maintenance of the 1997 8-hour ozone NAAQS in the Clark County 8-hour ozone nonattainment area.

## **II. Public Comments**

Our November 13, 2012 proposed rule provided for a 30-day comment period. We received comment letters in support of our

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<sup>7</sup> See 40 CFR part 51, subpart A ("Air Emissions Reporting Requirements").

proposed action from NDEP and the Washoe County Health District. In its comment letter, NDEP also noted that approval of the redesignation request for the Clark County 8-hour ozone nonattainment area will negate the need, that had been identified in EPA's proposed limited approval and limited disapproval of Clark County's revised NSR rules at 77 FR 43206, for a revision to NDEP's nonattainment NSR provisions at this time. We received no adverse comments in response to our November 13, 2012 proposed rule.

### **III. Final Action**

Under CAA sections 110(k)(3) and 107(d)(3)(D), and for the reasons set forth in our proposed rule and summarized above, EPA is taking final action to approve NDEP's submittal dated April 11, 2011 of Clark County's *Ozone Redesignation Request and Maintenance Plan* (March 2011) ("Clark County Ozone Maintenance Plan") as a revision to the Nevada SIP and to approve NDEP's request to redesignate the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS. In connection with the Clark County Ozone Maintenance Plan, EPA finds that the maintenance demonstration showing that the area will continue to attain the 1997 8-hour ozone NAAQS for 10 years beyond redesignation (i.e., through 2022) and the contingency provisions describing the actions that Clark County will take in the event of a future monitored violation meet all

applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. EPA is also approving the following motor vehicle emissions budgets (MVEBs) from the Clark County Ozone Maintenance Plan for transportation conformity purposes because we find that they meet the applicable transportation conformity requirements under 40 CFR 93.118(e) :

<b>Budget Year</b>	<b>VOC (tpd, average summer weekday)</b>	<b>NO<sub>x</sub> (tpd, average summer weekday)</b>
2008	65.08	68.46
2015	45.32	34.69
2022	36.71	23.15

These new MVEBs become effective on the date of publication of this final rule in the Federal Register (see 40 CFR 93.118(f)(2)) and must be used by U.S. Department of Transportation (DOT) and the Regional Transportation Commission of Southern Nevada (RTC) for future transportation conformity determinations for Clark County. The existing 2008 VOC and NO<sub>x</sub> MVEBs from the Clark County Early Progress Plan,<sup>8</sup> which EPA found adequate in 2009, are replaced by these budgets.

In connection with the redesignation request, EPA is taking final action to approve the request because we find that the area has met the five criteria for redesignation under CAA

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<sup>8</sup> On July 28, 2008, NDEP submitted the *8-Hour Early Progress Plan for Clark County, Nevada* (June 2008) to EPA as a revision to the Nevada SIP.

section 107(d)(3)(E). Specifically, we find that the area has attained the 1997 8-hour ozone NAAQS, that relevant portions of the Nevada SIP are fully approved, that the improvement in air quality is due to permanent and enforceable reductions in emissions, that Nevada has met all requirements applicable to the Clark County 8-hour ozone nonattainment area with respect to section 110 and part D of the CAA, and that the area has a fully approved maintenance plan meeting the requirements of section 175A (i.e., the Clark County Ozone Maintenance Plan approved herein).

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, redesignation of an area to attainment under section 107(d)(3)(E) and the accompanying approval of a maintenance plan under section 175A are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. Redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State

choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely approve a State plan and redesignation request as meeting Federal requirements and do not impose additional requirements beyond those by State law. For these reasons, these actions:

- Are not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to



Executive Order 13211 (66 FR 28355, May 22, 2001);

- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law. Nonetheless, EPA discussed the proposed action with the one Tribe, the Las Vegas Paiute Tribe, located within the Clark County 8-hour ozone nonattainment area. The Tribe has indicated that it concurs with the redesignation request.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress

and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

## **List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 20, 2012.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52-- [AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart DD - Nevada**

2. Section 52.1470 in paragraph (e), the table is amended by adding an entry for "Ozone Redesignation Request and Maintenance Plan, Clark County, Nevada (March 2011)" after the entry for "Emissions Inventory for 1995" to read as follows:

**§ 52.1470 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

EPA-Approved Nevada Nonregulatory and Quasi-Regulatory Measures

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
<b>Air Quality Implementation Plan for the State of Nevada</b>				
* * * * *				
Ozone Redesignation Request and Maintenance Plan, Clark	Clark County, Nevada: that portion of Clark County that lies in	4/11/11	[Insert <b><u>Federal Register</u></b> page number where the	Approval includes appendices A, B, and C. Relates

County, Nevada (March 2011)	hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218, but excluding the Moapa River Indian Reservation and the Fort Mohave Indian Reservation		<b>document begins and insert date of <u>FR</u> publication date]</b>	to the 1997 8-hour ozone standard.		
*	*	*	*	*	*	*

**PART 81-- [AMENDED]**

3. The authority citation for part 81 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

**Subpart C - [AMENDED]**

4. Section 81.329 is amended in the table for "Nevada-1997 8-Hour Ozone NAAQS (Primary and Secondary)" by revising the entry for "Las Vegas, NV" to read as follows:

**§81.329 Nevada.**

\* \* \* \* \*

Nevada - 1997 8-Hour Ozone NAAQS  
(Primary and Secondary)

Designated Area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type

Las Vegas, NV: Clark County (part) That portion of Clark County that lies in hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218, but excluding the Moapa River Indian Reservation and the Fort Mohave Indian Reservation. <sup>b</sup>	<u>[Insert date 30 days from date of publication]</u>	Attainme nt		
*	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>b</sup> The use of reservation boundaries for this designation is for purposes of CAA planning only and is not intended to be a federal determination of the exact boundaries of the reservations. Nor does the specific listing of the Tribes in this table confer, deny, or withdraw Federal recognition of any of the Tribes listed or not listed.

<sup>1</sup> This date is June 15, 2004 unless otherwise noted.

[FR Doc. 2013-00057 Filed 01/07/2013 at 8:45 am; Publication Date: 01/08/2013]